IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

WP(C).No. 25916 of 2006(I)

PETITIONER:

DULEEP THARIAN VERGHESE,
NETTIMAED BUNGALOW, TIRUVALLA,
KERALA-689 101.

BY ADV. SRI.JOSEPH KODIANTHARA
SRI.MITHUN MARKOS

RESPONDENTS:
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1. THE SPECIAL TAHSILDAR,
   LAND ACQUISITION, PATHANAMTHITTA.

2. THE DISTRICT COLLECTOR,
   PATHANAMTHITTA.

3. THE REVENUE BOARD,
   THIRUVANANTHAPURAM,
   REPRESENTED BY ITS SECRETARY.

4. STATE OF KERALA,
   REP. BY THE CHIEF SECRETARY TO GOVERNMENT,
   SECRETARIAT, THIRUVANANTHAPURAM.

5. KERALA INDUSTRIAL INFRASTRUCTURE
   DEVELOPMENT CORPORATION (KINFRA),
   KINFRA PARK, VELLAYAMBALAM,
   TRIVANDRUM.

R5 BY ADV. SRI.G.S.REGHUNATH
R1 TO R4 BY GOVERNMENT PLEADER SRI.MANOJ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1	TRUE COPY OF NOTIFICATION DATED 18.6.1994.
EXT.P1(a)	TRUE COPY OF DECLARATION DATED 15.5.1996.
EXT.P1(b)	TRUE COPY OF O.P.NO.11910/1997 BEFORE THIS COURT (WITHOUT EXHIBITS).
EXT.P2	TRUE COPY OF STAY ORDER DATED 11.7.1997 OF OF THIS COURT IN O.P.NO.11910/97.
EXT.P3	TRUE COPY OF ORDER DATED 14.8.1997 OF THIS COURT IN O.P.NO.11910/1997.
EXT.P4	TRUE COPY OF VERIFIED PETITION DATED 19.3.1998 IN O.P.NO.11910/1997.
EXT.P5	TRUE COPY OF ORDER DATED 19.3.1998 OF THIS COURT IN O.P.NO.11910/1997.
EXT.P6	TRUE COPY OF ORDER DATED 16.8.2000 OF THIS COURT IN O.P.NO.11910/1997.
EXT.P7	TRUE COPY OF JUDGMENT DATED 12.6.2003 OF THIS COURT IN O.P.NO.11910/1997.
EXT.P8	TRUE COPY OF JUDGMENT OF THIS COURT DATED 20.6.2005 IN W.A.NO.1218/2003.
EXT.P9	TRUE COPY OF FORM 12 NOTICE DATED 19.6.1998 ISSUED UNDER RULE 15(3) OF THE LAND ACQUISITION ACT.
EXT.P10	TRUE COPY OF FORM 10(b) NOTICE DATED 19.6.1998 ISSUED UNDER SECTION 12(2) OF THE LAND ACQUISITION ACT.
EXT.P11	TRUE COPY OF LETTER DATED 19.6.1998 WITH ENCLOSURE FROM THE PETITIONER'S ADVOCATE TO THE SPECIAL TAHSILDAR WITH ENCLOSURE.
EXT.P12	TRUE COPY OF FORM 12 NOTICE DATED 22.8.1998 ISSUED UNDER RULE 15(3) OF THE LAND ACQUISITION ACT.
EXT.P13	TRUE COPY OF FORM 10(b) NOTICE DATED 22.8.1998 ISSUED UNDER 12(2) OF L.A.ACT.
EXT.P14	TRUE COPY OF LETTER DATED 21.9.1998 OF THE PETITIONER TO THE SPECIAL TAHSILDAR.

EXT.P15 TRUE COPY OF FORM 12 NOTICE DATED 18.2.1999 ISSUED UNDER RULE 15(3) OF THE L.A.ACT.

EXT.P16 TRUE COPY OF FORM 10(b) NOTICE DATED 18.2.1999 ISSUED UNDER 12(2) OF L.A.ACT.

EXT.P17 TRUE COPY OF NOTICE DATED 13.8.1999 ISSUED TO THE PETITIONER BY THE SPECIAL TAHSILDAR.

EXT.P18 TRUE COPY OF ORDER DATED 24.9.1999 OF THIS COURT IN O.P.NO.11910/1997.

EXT.P19 TRUE COPY OF LETTER DATED 9.12.2005, AWARD NO.6/ 98-99 DATED 28.3.1998 AND PROCEEDINGS OF BOARD OF REVENUE DATED 3.6.1998 RECEIVED FROM THE SPECIAL TAHSILDAR.

EXT.P20 TRUE COPY OF LETTER DATED 17.4.2006 OF THE PETITIONER TO THE SPECIAL TAHSILDAR.

EXT.P21 TRUE COPY OF COMPILATION OF PAPERS INCLUDING PROCEEDINGS OF THE BOARD OF REVENUE DATED 3.6.1998, AWARD NO.6/98-99(UNDATED) AND NOTES ON AWARD ATTESTED BY THE SPECIAL TAHSILDAR ON 28.4.2006.

EXT.P22 TRUE COPY OF LETTER DATED 27.1.2005 OF THE SPECIAL TAHSILDAR TO THE PETITIONER.

EXT.P23 TRUE COPY OF LAND TAX RECEIPT DATED 14.2.2001.

EXT.P24 TRUE COPY OF BUILDING TAX RECEIPT DT.18.3.2005.

EXT.P25 TRUE COPY OF COUNTER AFFIDAVIT BY THE SPECIAL TAHSILDAR IN W.P.(C)NO.10875/2006.

EXT.P26 TRUE COPY OF FORM NO.4 PROCEEDINGS DATED 30.8.2006 OF THE FIRST RESPONDENT.

RESPONDENTS' EXHIBITS:

EXT.R5(a) TRUE COPY OF THE ORDER DATED 2.9.2005 IN S.L.P. NOS.17613-17614/05 BEFORE THE HONOURABLE SUPREME COURT OF INDIA.

EXT.R5(b) TRUE COPY OF THE ORDER DATED 6.12.2005 IN R.P.(C)NOS.1883-1884/05 BEFORE THE HONOURABLE SUPREME COURT OF INDIA.

EXT.R5(c) TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE THIRD RESPONDENT IN W.A.NO.1219/2003 BEFORE THIS COURT.

EXT.R5(d) TRUE COPY OF THE DRAFT AWARD NO.B319/94 DATED 28.3.1998 OF THE FIRST RESPONDENT.

EXT.R5(e) TRUE COPY OF THE MAHAZAR DATED 19.2.1999 OF THE DISTRICT INDUSTRIES OFFICER.

EXT.R5(f) TRUE COPY OF THE LETTER NO.B319/94 DATED 25.2.2006 OF THE FIRST RESPONDENT.

EXT.R5(g) TRUE COPY OF G.O.(MS)NO.331/03/REV. DATED 16.10.2003.

EXT.R5(h) TRUE COPY OF THE LETTER NO.KIN/PRJ/701/2004-05 DATED 16.9.2004 SENT BY THE FIFTH RESPONDENT TO M/S.ROY CONSTRUCTIONS LTD.

EXT.R5(i) TRUE COPY OF THE AGREEMENT DATED 23.9.2004 BETWEEN THE FIFTH RESPONDENT AND M/S.ROY CONSTRUCTIONS LTD.

//TRUE COPY//

AHZ/

K.T. SANKARAN, J.

W.P.(C). NO. 25916 OF 2006 I

Dated this the 7th day of March, 2007

JUDGMENT

The prayer in the Writ Petition is to declare that the acquisition proceedings initiated pursuant to Exts.P1 and P1(a) have lapsed under Section 11A of the Land Acquisition Act, 1894. There is also a prayer for the issue of a writ of certiorari to quash Exts.P1, P1(a), P9, P10, P12, P13, P15 to P17, P19, P21 and P22.

2. Government of Kerala accorded sanction for setting up of an Industrial Growth Centre in Pathanamthitta District as per order dated 24.9.1992. The General Manager, District Industries Centre, Kozhencherry had furnished requisition for the acquisition of necessary land through the District Collector, Pathanamthitta. Notification under Section 4(1) of the Land Acquisition Act was published in the Kerala Gazette extra ordinary on 18.6.1994. The notification was published in local dailies on

14.6.1994 and 18.6.1994. Notice in Form 4(a) of the Act was published in the locality on 15.6.1995. An enquiry as contemplated under Section 5A was conducted. The Board of Revenue, Thiruvananthapuram accorded sanction for acquisition of the land. The land was surveyed by the Superintendent of Survey and Land Records, Pathanamthitta. Draft declaration was approved by the Board of Revenue, Thiruvananthapuram on 29.3.1996 and it was published in the Kerala Gazette extra ordinary on 15.5.1996 and two dailies dated 9.6.1996 and 14.6.1996. It was also published in the locality on 3.6.1996 under Section 6(2) of the Land Acquisition Act. The total area for which draft declaration was approved was 38.8946 hectares of land. The fifth respondent, Kerala Industrial Infrastructure Development Corporation (KINFRA), requested for an area of 14.83 hectares for setting up an industrial park. It is stated by the fifth respondent in the counter that as per order dated 16.10.2003, Government transferred possession of 14.48 hectares of land in Sy.No.208 of Kunnamthanam Village (plot No.15), out of

the acquired land of 38.8946 hectares and that the fifth respondent became the absolute owner in possession of 14.48 hectares. It is also stated by the fifth respondent that it had remitted the entire amount payable by it, namely, Rs.87,30,734/- to the Government.

3. The petitioner is engaged in the business of planting and he owns an estate called 'Pamala Estate' in Thiruvalla. 14.83 hectares comprised in 'Pamala Estate' was also sought to be acquired as per the proceedings mentioned above for the purpose of the fifth respondent. Exts.P1 and P1(a) are the notification under Section 4(1) and the declaration under Section 6 respectively. Petitioner challenged the declaration in O.P.No.11910 of 1997 on the ground that the declaration was issued after the expiry of one year from the date of publication of the notification under Section 4(1) of the Act and therefore, violative of the proviso to Section 6(1) of the Act. O.P.No.11910 of 1997 was dismissed as per Ext.P7 judgment dated

12.6.2003. It was held that the notification under Section 4(1) of the Act was published in the locality on 3.6.1995 and the declaration under Section 6 having been made on 20.5.1996, there was no violation of the proviso to Section 6(1) of the Act. Challenging Ext.P7 judgment, petitioner filed Writ Appeal, which was dismissed by Ext.P8 judgment dated 20.6.2005. The petitioner filed S.L.P.(Civil) No.17614 of 2005 before the Honourable Supreme Court, which was dismissed on 2.9.2005. Review Petition No.1884 of 2005 filed by the petitioner before the Honourable Supreme Court was also dismissed on 6.12.2005.

4. The case of the petitioner is that after excluding the period covered by the said orders issued by this Court in the Writ Petition filed by the petitioner, the last date for filing the award was 19.6.1998. The petitioner received Ext.P19 communication dated 9.12.2005 enclosing the award dated 28.3.1998, and the proceedings of the Board of Revenue dated 3.6.1998, approving the award. The petitioner

contends that the award forwarded along with the communication dated 9.12.2005 (Ext.P19) is only a draft award and after the approval by the Board of Revenue, no final award was passed. It is contended that since no final award was passed within the time provided under Section 11A of the Act, the petitioner is entitled to a declaration as prayed for.

5. In the counter affidavit filed by the first respondent, it is stated in paragraph 5 thus:

> "5. The District Collector, Pathanamthitta as per letter No.C2-10102/04 dated 24.4.98 submitted a draft award to the Secretary, Board of Revenue, Thiruvananthapuram for previous approval for an extent of 14.48 Hectares of land in Sy.No.208 of Kunnamthanam Village as per the provision U/s 11 of L.A.Act and 12(1)(b) of L.A.Act Kerala Rules since, the award amount exceeds 50 lakhs. The Board of Revenue accorded sanction to pass final award vide proceeding No.R.dis./12161/98LRC(3) dated 3.6.98. The order received in the office of the Special Tahsildar on 4.6.98 and final award was declared on 4.6.98 accepting the date of award as 3.6.98."

In paragraph 9 of the said counter affidavit, it is stated that after declaring the award on 4.6.1998, notices in Form 12 and 10(b) of the Land Acquisition

(Kerala) Rules were issued to the petitioner and that he had not raised any contention that no award was passed. It is also stated that the date mentioned in the copy of the award was mistakenly shown.

6. In the counter affidavit filed by the second respondent, similar contentions as raised by the first respondent have been raised. The fifth respondent in its counter statement contended that the Writ Petition is barred by res judicata since in the earlier proceedings the petitioner failed to raise the contentions raised in the present Writ Petition. Ext.P10 notice under Section 12(2) of the Act was issued to the petitioner on 19.6.1998 and the petitioner had submitted an application for reference under Section 18 of the Act. The petitioner having applied for reference under Section 18, he is not entitled to file the Writ Petition. It is stated that possession of the property was transferred in favour of the fifth respondent as per Ext.R5(g) Government Order dated 16.10.2003. The fifth respondent had already

spent more than Rs.50 lakhs for development work in the property. There was obstruction on the part of the petitioner in undertaking the developmental activities. The fifth respondent had produced draft award as Ext.R5 (d), which is dated 28.3.1998. The draft award was made on 28.3.1998 and the final award was passed on 3.6.1998. It is stated that the entire amount of compensation is determined up to 2.6.1998 and the award was made on 3.6.1998. It is pointed out that the award produced as Ext.P19 would show that the increase on market value under Section 23(1A) was calculated and entered for the period from 15.6.1995 to 2.6.1998. It is contended that the provisions of the Land Acquisition Act have been strictly complied with and the petitioner is not entitled to the reliefs prayed for in the Writ Petition.

7. The learned counsel for the petitioner contended that the mandatory requirements of the Land Acquisition Act have not been complied with and no award was passed within the time prescribed under

Section 11A of the Act. Ext.P19 is a draft award and the date shown therein is 28.3.1998, though the benefit under Section 23(1A) is calculated up to 2.6.1998. After sanction was accorded by the Board of Revenue as per the proceedings dated 3.6.1998, the Collector should have passed an award afresh and the draft award is not a substitute for an award. The learned counsel appearing for the fifth respondent as well as the learned Government Pleader relied on the decision of the Supreme Court in **Smt.Bailamma** v. **Poornaprajna House Building Co-operative Society** (AIR 2006 SC 1132) to counter the submission made by the counsel for the petitioner. They submitted that a similar contention raised before the Supreme Court was not accepted in Bailamma's case. The contention raised in Bailamma's case was that there was nothing on record to indicate that after the approval was granted by the Government, the Collector signed the award and that no award was made in accordance with Section 11 of the Act. It was also contended before the Supreme Court that the award sent to the Government for approval could at best be a

draft award and after approval, the Collector should have signed the award and thereafter communicated the award to the parties.

8. In Bailamma's case, the Honourable Supreme Court held that after the award is approved, if there is no alteration in the award, the Collector is required to notify the parties concerned about the award. It was further held thus:

> ".. There is nothing in Section 11 which expressly requires the Collector to announce his award in the presence of the persons interested, though there is nothing which prevents him from declaring the award on a date fixed by him for the purpose. However, having regard to the provisions of Section 12(2) of the Act, he must give immediate notice to such of the persons interested as are not present personally or by their representative when the award is made..."

As regards the contention as to whether the Collector should sign the award after the approval by the Government, the Supreme Court held in Bailamma's case thus:

> ".. The award which has already been signed by the Collector becomes an award as soon as it is

> approved by the Government without any alteration. At best the appellants can contend that it becomes an award when notice is given to the parties interested. Viewed from any angle, having regard to the fact that there is no dispute that the Government granted its approval on 16.11.1992 and notices were issued under Section 12(2) of the Act on November 20,1992, it must be held that the award was made within the period prescribed by Section 11A of the Act. There was really no necessity for the Collector to sign the award again, nor does Section 11 require that for the purpose of pronouncing the award notice should be given by the Collector to the persons interested..."

9. In the case on hand, the award forwarded along with Ext.P19 communication shows that interest on market value under Section 23(1A) was computed for the period from 15.9.1995 to 2.6.1998. Draft award was approved on 3.6.1998. The contention that the award was declared on 4.6.1998 accepting the date of award as 3.6.1998 is liable to be accepted. Ext.R5(d) draft award would also indicate that this contention is true since the benefit under Section 23(1A) was calculated originally for a period up to 28.3.1998 and it is seen scored off and written as 2.6.1998. The date noted as 28.3.1998 in the draft award must certainly be a mistake as contended by the respondents.

10. There is no dispute that the petitioner received notice under Section 12(2) of the Act and that he made an application under Section 18 of the Act for reference. Section 12(2) provides that the Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made. Section 18 provides that any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested. Having received notice under Section 12(2) of the Act issued in Form 10(b) and having filed the application for reference under Section 18, the petitioner is estopped from contending that there were no award in the eye of law. If there is no award, he could not have applied for reference.

Notice under Section 12(2) was issued on 19.6.1998. If no award is passed, a notice under Section 12(2) could not have been issued. If the notice under Section 12 (2) is not legal and proper, an application under Section 18 could not have been maintainable. The facts and circumstances as disclosed in the Writ Petition, counter affidavit and documents produced along with the same would conclusively establish that the contention raised by the petitioner that no award was made within the period provided under Section 11A of the Act is unsustainable.

The Writ Petition lacks merits and it is accordingly dismissed.

(K.T.SANKARAN)
Judge

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